

REMARKS

Claims 1 and 5-12 were pending in the present application. By this Amendment, Applicants have canceled claims 8-11 without prejudice to their right to present the subject matter of the canceled claims in a future continuing application. Applicants have amended independent claim 1 to incorporate subject matter from now canceled claim 11. Applicants also have amended dependent claims 5 and 7. Support for the claim amendments can be found throughout the specification and claims as originally filed. Specifically, support can be found, *inter alia*, at page 4 in the specification. The present Amendment introduces no new matter, and thus, its entry is respectfully requested. Upon entry of the present Amendment, claims 1, 5-7 and 12 will be pending and under examination.

The July 3, 2006 Final Office Action

Examiner's Claim Rejections Under 35 USC §103

In the July 3, 2006 Final Office Action, claims 1 and 5-7 were rejected under 35 U.S.C. §103(a) as being obvious over Gubernick (U.S. Pat. No. 6,066,327, of record) in view of Chen (U.S. Pat. No. 6,524,626, of record). Claims 8-12 were rejected as being obvious over Gubernick, in view of Chen, in further view of Meybeck (U.S. Pat. No. 5,164,182, of record). The Examiner's rationale for the rejections is set forth at pages 2-5 of the Office Action.

While the Examiner has slightly rearranged the primary and secondary references cited in

support of her obviousness rejections, the Examiner's position itself essentially remains as it had been set forth in previous Office Actions. In particular, the Examiner continues to assert that it would have been obvious to have arrived at the claimed compositions through modifications of those taught in the art. The Examiner also continues to base the obviousness rejections on the assertion that the differences in concentration levels between the antioxidants present in the prior art compositions and those in the claimed compositions represent nothing more than routine optimization of the conditions taught generally in the references. The Examiner has thus concluded that the cited art renders Applicants' claims obvious under 35 U.S.C. §103(a).

In response, without conceding the correctness of the Examiner's position, but to expedite allowance of the subject application, Applicants have amended independent claim 1 to recite a topical cosmetic composition having three anti-free radical agents selected from the group consisting of panax ginseng, morus alba, and magnesium or sodium ascorbyl phosphate, each of which is present in an amount that falls within a specified range. Claim 1, as amended, incorporates subject matter from now canceled claim 11, and embodies a successful product that is currently sold in the United States. Moreover, Applicants provide the following comments on the Examiner's rejection and on Applicants' amended claim 1.

Applicants first point out that paragraphs 1 and 3 on page 2, and paragraph 1 on page 6 of the present application make clear that compositions comprising naturally occurring anti-oxidants are known to reduce the formation of free radicals on the skin. However, to achieve

effective efficiency, high levels of these anti-oxidant materials must be used, and this can result in dark, aesthetically unpleasant products. The inventors of the presently claimed invention have found that very low levels of certain ingredients may be used to provide compositions with very high efficacy without producing dark aesthetically unpleasing products. The claims of the present application have now been amended to encompass a particularly preferred embodiment which achieves this effect and which is currently sold in skincare products in the USA.

Applicants note that two sets of data have been provided concerning the presently claimed composition. First, in the *in vitro* data provided in the present application itself, Table 1 (pages 50-52) shows that when panax ginseng extract is used at a level of 0.1% without the other anti-oxidants now specified in the present claims, there is no protective effect against free radicals on the skin, i.e. lipid peroxidation is 100%. Similarly, when levels of 1.5% magnesium ascorbyl phosphate and 0.1% morus alba extract are used in individual compositions, without the other anti-oxidants specified in the present claims, there is also no protective effect against free radicals on the skin. However, the combination of ingredients of present Claim 1, in the particular amounts recited, does lead to the benefit of protection from free radicals. This is demonstrated in Table 1, which shows that in a composition containing 1.5% magnesium ascorbyl phosphate, 0.1% panax ginseng extract and 0.1% morus alba extract, there is complete protection from lipid peroxidation, that is, there is 0% lipid peroxidation.

Second, in the Declaration submitted December 20, 2004, paragraph 13.4 demonstrated

that, of the sodium ascorbyl phosphate-containing formulations (preferred due to the additional skincare effects of Vitamin C derivatives, including the production of collagen), the composition comprising sodium ascorbyl phosphate, ginseng and morus alba showed the most significant synergistic effect obtained (98.6%) in comparison to the predicted additive effect (54.7%).

Each of these sets of data support the patentability of the invention as now claimed. With respect to the art cited by the Examiner, Applicants provide the following additional comments.

Gubernick refers to an anti-oxidant mixture for a cosmetic composition comprising magnesium ascorbyl phosphate generally disclosed to be any amount in the range 0.01 -20% w/w. The Examiner acknowledges that there is no teaching regarding the incorporation of panax ginseng and morus alba to this composition.

Chen teaches topical compositions to soften and moisturize the skin, while providing essential vitamins and nutrients to the skin which contain panax ginseng. The present claims recite the use of 0.005 to 0.1% w/w panax ginseng.

As previously brought to the attention of the Examiner, Panax ginseng is disclosed to have an anti-oxidant effect in excess of 10mg vitamin C only when used in an amount of 1000mg Panax ginseng. That is, Chen, col 3 lines 9-11, discloses that 1000mg of ginseng berry contains 1.4 times more anti-oxidant than 10mg of Vitamin C. Therefore, this teaches the skilled person that in order to achieve satisfactory levels of Panax ginseng, it must be used in significant amounts in the formulation. It is noted that Examples 5, 14 and 27 employ more than 40% panax

ginseng and also include morus alba. Thus, these examples contain more than 800 times the maximum of ginseng (0.05%) specified in Applicants' Claim 1. Even Examples 9, 13, 22 and 26 (specifically referred to by the Examiner), each of which incorporates 1% Vitamin C, include a total of ginseng berry extract and root extract combined of 7%, 12%, 4% and 6% respectively. Even the minimum of 4% w/w in Example 22 represents more than 80 times the maximum amount of panax ginseng specified in present Claim 1. In addition, the morus alba, when present, is used in an amount of 1% of each of the Example compositions. This is 200 times the maximum amount now recited in Claim 1.

In view of the huge difference between the amounts used in the Chen compositions, and the amounts used in the compositions of the present invention, the Applicants submit that it is simply not obvious to arrive at a composition as now claimed in Claim 1. Furthermore, in view of the fact that 0.1% ginseng extract alone is shown to have no protection against free radicals (as noted above), there is no motivation whatsoever to combine it with other ingredients at levels less than 0.1%. Moreover, even if such combination were tried, it is clearly surprising that when combined with the other ingredients, a maximized protection effect is achieved.

The Maybeck reference teaches that mulberry extract may be used in an amount ranging from 0.005-1% w/w as a skin-lightening and anti-inflammatory agent. Maybeck does not, however, teach the incorporation of panax ginseng or ascorbyl phosphate into this composition.

Accordingly, in light of the above remarks, and in view of the amended claims,

Applicants respectfully request reconsideration and withdrawal of all of the rejections set forth by the Examiner under 35 U.S.C. §103.

Applicants believe that the Examiner's rejections set forth in the July 3, 2006 Final Office Action have been fully overcome by the remarks and claim amendments presented herein, and that the present application is in condition for allowance. The Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

No fee is believed due in connection with the filing of this Amendment. If, however, any fee is deemed necessary, authorization is hereby give to charge such fee, or credit any overpayment, to Deposit Account No. 02-2135.

Respectfully submitted,



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